

# **Committee on the Administration of Justice**

## **Human Rights on the Island after Brexit**



Promoting Justice / Protecting Rights

## About CAJ

The Committee on the Administration of Justice (CAJ) was established in 1981 and is an independent non-governmental organisation working for human rights and affiliated to the International Federation of Human Rights (FIDH). CAJ takes no position on the constitutional status of Northern Ireland and is firmly opposed to the use of violence for political ends. Its membership is drawn from across the Community and it takes no government funding.

**CAJ's role is to address directly the human rights issues that determine conflict or peace**



# Introduction

This paper looks at the possible threats to human rights and accordingly to the operation of criminal justice across the island in the aftermath of Brexit.

It will examine the issues that arise that are particular to the Irish situation, not how the impact of Brexit on EU-wide criminal justice cooperation may impact on this island

In particular, we will look at the threats to the peace agreement

The 1998 settlement brought the conflict to an end. No plausible alternative has been proposed that would not run the risk of a return to conflict and a consequent bonfire of human rights. It is therefore the first line of defence for human rights activists.

# The Belfast Good Friday Agreement

The Agreement creates a unique constitutional context for Northern Ireland. One of its purposes was declared to be that the British and Irish governments wished:

To develop still further the unique relationship between their peoples and the close co-operation between their countries as friendly neighbours and as partners in the European Union; [Preamble; British Irish Agreement 1998]

There is therefore a presumption that the treaty and the attached Multi-Party Agreement are to be understood in the context of the common membership of the European Union (EU) of Ireland and the UK. The departure of the UK from the EU (Brexit) will therefore have significant effects on the operation of the Agreement.

The equal rights of Irish and British citizens, a principle of the BGFA, in great part relies on the equal rights of both as having EU citizenship. The lack of significant border regulation is largely due to common membership of the EU, North and South, as well as the improved security situation. Many equality and anti-discrimination provisions in Northern Ireland, which have particular importance in a divided society, rely on EU law.

Let us look more closely at some of the ways in which Brexit may have a negative effect on the peace settlement.

### **The process was and is an all-island one**

While there are three strands of the Agreement (BGFA), its all-island character is not restricted to Strand 3 (North-South). The Irish government was intimately involved in the negotiations, the BGFA was sealed with a British-Irish Treaty, all-island cross-border bodies were established, there is the concept of “equivalence” in human rights protections, the recognition of the “birthright” of people who live in Northern Ireland to Irish citizenship makes that concept an all-island one and many of the outworkings of the peace process involve both parts of the island.

### **The process was founded on the exercise of self-determination**

The BGFA recognised that “It is for the people of the island of Ireland alone...without external impediment, to exercise their right of self-determination.” The people of the whole island voted for or against the Agreement on the same day and on the same question. The UK-wide Brexit vote involved a complete disregard for the principle of self-determination as regards both Northern Ireland and the island of Ireland. The North has been explicitly subordinated to the will of the UK as a whole.

### **The “birthright” of the ability to be Irish or British or both by individual choice is a fundamental pillar of the Agreement**

For most people, the passport of choice is not just an identity accessory like a Gaelic top or a Rangers shirt but a declaration of national aspiration and indeed allegiance.



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### **Equality in the broadest sense is a key element of the peace process**

Equality between the two main communities is, of course, a basic principle of the BGFA and is explicitly recognised in the concepts of “equality of treatment” and “parity of esteem,” though the extent to which these concepts have been implemented in practice is another matter. However, Sec 75 of the Northern Ireland Act and associated measures cover a broad range of categories. To overcome the negative characteristics of a divided society, it is necessary not just to confront the headline prejudice (sectarianism) but also to attempt the creation of an equal society, accepting of diversity, at least as regards aspects of personal identity. Given the inter-sectionality of diverse forms of prejudice, confronting sectarianism requires a broad based equality agenda.

### **Human rights protections are a basic part of the Agreement but have only been implemented partially and may be threatened**

All the weaknesses and failures in implementing these have reduced the robustness and resilience of the institutions and the peace process as a whole. There is a continuing need to fulfil and go beyond the protections envisaged in the BGFA and succeeding agreements. This is all the more important in view of the long term ambition of elements within the Conservative Party to repeal the Human Rights Act and perhaps also to denounce the European Convention on Human Rights.

## **A “hard” border and the Common Travel Area**

The complex constitutional context of Northern Ireland and the mutual recognition rights regarding Irish or British citizenship, as well as the north-south and east-west arrangements under the Agreement, provide a compelling case that the right to freedom of movement should be considered as applying across the island of Ireland.

The re-creation of a “hard” border across the island of Ireland would disrupt the basis of the BGFA and potentially make it the site of racial discrimination thus violating international human rights standards.

2004 agreement – initiated by Irish side provides that “all of the people of Northern Ireland” now means only people who were born with an Irish or British parent or a parent who would otherwise have a right of permanent residence. This could be seen as an ominous precedent as to what might now happen in the context of negotiating the outworking of Brexit and the land border.

Even if the CTA remains for Irish and British citizens, anyone whose appearance or accent suggests they may not be one or the other are likely to be fair game for stop-checks. This would be clear racial profiling. Or if there is relatively free movement across the island, we could see the territory of Northern Ireland targeted by UK authorities for particularly severe

and intrusive immigration checks including raids on workplaces and increased detention of migrants.

How all this will impact on criminal justice cooperation across the island will have to be considered by the relevant people and agencies North and South. CAJ has been working with colleagues in an attempt to propose solutions. Here are some preliminary views:

### **Protecting the Agreement – some preliminary suggestions**

- 1. Amend the Withdrawal Bill to make the British-Irish Treaty underpinning the BGFA legally enforceable**
- 2. Amend the Withdrawal Bill to retain the EU Charter of Fundamental Rights as enforceable in UK law**
- 3. Make a reciprocal agreement with the EU to maintain all the existing rights of EU citizens in NI in return for all those born in the North, whether British or Irish citizens, having the rights of EU citizenship**
- 4. Impose a legal duty on the UK Government to guarantee equality of rights of Irish and British citizens**
- 5. Prohibit immigration controls on the border**
- 6. Guarantee equivalence of rights on either side of the border**
- 7. In the longer term, enact a Bill of Rights for NI that will guarantee a rights based society and regulate the fair operation of the devolved institutions**